

REMARKS

In response to the Office Action of November 2, 2004, Applicant submits the following Remarks.

I. Double Patenting

In the Office Action claims 1, 3-6, 9, 10, 12, 15, 18 and 19 were provisionally rejected for double patenting as being unpatentable over claims 1-3, 5, 6, 8, 12, 17-21, 25-27 of copending Application No. 09/943,647. In view of the terminal disclaimer submitted herewith, Applicant submits that the double patenting issue is now moot. Accordingly, it is respectfully requested that the double patenting rejection be withdrawn.

II. Claim Rejections – 35 USC § 103

The prior art fails to disclose or suggest each and every limitation of the claims and therefore fails to make obvious the claimed invention.

Claim 1 of the present application requires “*the at least one stack of test members being enclosed in a magazine which is initially sealed by a moisture impermeable seal.*” Thus, claim 1 requires multiple test members to initially be sealed together in a magazine. Additionally, Claim 1 requires a blade means wherein *movement of the magazine relative to the housing from an initial position where the seal is intact to a position where the pusher can push a first one of the test members from the stack causes the blade means to cut the seal to form a slit through which a test member can pass when the test member is pushed by the pusher.* Thus, as set forth in

Claim 1, the claimed invention is directed to a test device having a blade means that breaks a seal that seals a stack of test members as a result of the movement of the magazine relative to the housing. Moreover, Claim 1 requires that the blade means does this prior to pushing any test member by the pusher.

In contrast to the claimed invention, Brenneman discloses a device wherein the individual sensors are sealed from each other rather than together. Moreover, the seal of each individual sensor disclosed in Brenneman is only broken when the individual sensor is pushed toward its testing position by the slide actuator (which the Office Action contends is equivalent to Applicant's pusher). See, Brenneman, column 5, lines 31-43. Thus, no movement of any *magazine relative to the housing* causes the breakage of any seal.

Likewise, the other cited prior art references fails to disclose these limitations of Claim 1 and therefore the prior art as a whole can not possibly disclose or suggest these limitations of Claim 1. For example, Friedlander discloses a test device comprising a stack of test members and an O-ring seal. However, providing a blade means to cut the O-ring seal would defeat the purpose of the O-ring, and therefore would clearly be not be suggested by Friedlander.

In view of the foregoing, Applicant submits that the prior art fail to make obvious Claim. As such Applicant submits that the rejection of Claim 1 under 35 USC §103 is improper and should be withdrawn. Likewise, it follows then that Claims 2-6, 9-16, and 18-20, being dependent upon Claim 1, are also not obvious in view of the prior art.

III. The Office Action Fails To Set Forth Any Proper Rejection Of Claims 14, 16, And 20

The Office Action failed to set forth any rejection of Claims 14, 16, and 20.

IV. Conclusion

In view of the foregoing, Applicant submits that the present application is in condition for allowance and notification of such is earnestly solicited. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Respectfully submitted,



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